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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,070	10/18/2006	Juan Moya	19775	9172
272 7590 05/18/2009 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
LOPEZ, FRANK				
ART UNIT		PAPER NUMBER		
3745				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/583,070

Applicant(s)

MOYA, JUAN

Examiner

DANIEL LOPEZ

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

Applicant's arguments filed February 4, 2009, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 1-6 have been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by the added limitations that the "total control valve having at least one measuring surface on a slidable spool" (claim 1 line 5-6, emphasis added).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1-6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 9 "a pump" should be --each pump--, since it appears to be referring to both the one pump (line 7) or the other pump (line 8).

Claims not specifically mentioned are indefinite, since they depend from claim 1.

Claim Rejections - 35 USC § 102

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by either Nakamura (6183210). Nakamura (6183210) discloses a hydraulic circuit comprising first and second variable displacement pumps (1, 2) each connected to respective first and second working circuit (PA1, PA2) and each having a volume separately adjusted by respective first and second adjusting devices (20A, 20B), acted on by an respective adjusting pressure, controlled by respective first and second total power control valve (22A, 22B); wherein each total power control valve has a valve piston with a ring surface (22a) directly acted on by a control pressure, against a spring (22d), such that the control pressure acting on each total power control valve is the working pressure of the other respective pump; and wherein the valve piston is acted on by a force which is proportional to a power of the respective pump (by pressure in 22b).

That the measuring surface of the total power control valve of Nakamura (6183210) is on a slidable spool is a question of what is being disclosed by valve 22 of Nakamura (6183210). Ishikawa et al discloses a valve (e.g. 22) having the same schematic as the total control valve of Nakamura (6183210) and states that the valve includes a spool (22a), a spring (22b) and a control piston (22d). Based on the clarification of Ishikawa et al, one of ordinary skill in the pump control art would understand that the total power control valve of Nakamura (6183210) includes the measuring surface being part of a spool. Similarly Hoffmeister et al shows a control valve (e.g. 63, fig 3) having 2 measuring surfaces (72, on 82) as part of a spool (69). Based on the clarification of Hoffmeister et al and on the fact that the total power control valve of Nakamura (6183210) has 3 measuring surfaces, one of ordinary skill in the pump control art would understand that the total power control valve of Nakamura (6183210) includes the measuring surfaces being part of a spool.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. § 103 as being unpatentable over Nakamura (6183210) in view of Childress et al. Nakamura (6183210) discloses all the elements of claim 2, as discussed in the above 102 rejection; but does not disclose that the total power control valves are formed by valve cartridges.

Childress et al teaches, for a hydraulic circuit comprising a variable displacement pump (11) having a volume adjusted by an adjusting device (15), acted on by an adjusting pressure, controlled by a control valve (26); that the control valve is formed by a valve cartridge.

Since Nakamura (6183210) does not show details of the total power control valve, whereas Childress et al shows details of a similar type valve; it would have been obvious at the time the invention was made to one having ordinary skill in the art to form the total power control valves of Nakamura (6183210) as valve cartridges, as taught by Childress et al, since one having ordinary skill in the art would have been able to carry out such a formation and the resulting combination would predictable work in the same manner.

Conclusion

Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM –4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The official fax number is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
May 15, 2009